COMMITTEE CORRESPONDENCE

Address Writer at
ENVIRONMENTAL ACTIVITIES STAFF GENERAL MOTORS CORPORATION
GENERAL MOTORS TECHNICAL CENTER 30400 MOUND ROAD
WARREN MICHIGAN 48090-9015

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Re: NL Industries/Taracorp, Generator Class Carve-out

Gentlemen:

During our meeting with you last Friday, we received the clear indication that EPA-Region V was interested in a carve-out proposal which would include all viable generators. As we discussed with you on Friday, a generator Steering Committee and general PRP Committee meeting were both held on Monday. A good portion of both of those meetings was spent discussing the elements of a potential generator settlement. As you might expect, there was substantial concern with respect to: (1) acceptance of several aspects of the ROD, particularly the residential soil removal criteria; and (2) the allocation of responsibility between the generators and the owner/operator. Nevertheless, the participants at these meetings discussed several possible means of resolving these issues that could lead to a class settlement. The potential resolutions we discussed and a brief rationale underlying them are set forth below.

The PRP Committee has attempted to have meaningful allocation discussions with NL Industries so that negotiations with EPA could go forward. However, NL Industries has resisted and in fact made no attempts to cooperate with the generators. NL Industries is currently in litigation with a number of generators over this question of owner-generator allocation. Clearly, NL Industries has for what ever reason not negotiated in good faith with the Committee and, consequently, foreclosed the possibility of a joint generator/owner good faith offer for RD/RA actions at this site. Moreover, its contention that as a viable past owner that it should require the generators to pay 90% of the costs for the remediation of an ongoing facility is not consistent with the basic objectives originally set out for the Superfund (i.e., to remediate abandoned toxic waste sites) or any sense of fairness. The generators see no possibility to reach an agreement with NL Industries on allocation or mechanisms to go forward in a settlement mode.

Despite the contentious nature of NL Industries and the fact that EPA has a strong case against this financially viable owner, the generators are attempting to negotiate a settlement in good faith with EPA to resolve our liability. The technical components of the ROD allow for the discrete segmentation of tasks in the remediation of this site. The group is offering to perform a substantial portion of the ROD remedy, which would expedite the clean-up of this site. Moreover, the generators are offering to do work in the areas of highest soil-lead, thereby immediately reducing any potential unacceptable risks to the public health, rather than take the tack of prolonged litigation. The acceptance of the generator carve-out offer by EPA would simplify any EPA litigation at this site.

The generators are making this carve-out offer despite the fact that NL Industries owned and operated the secondary lead smelter in a manner that caused the elevated levels of lead observed in the nearby area. The generators had no input into NL Industries functions and, considering the allocation case against NL Industries and its viability, are going far beyond what would required of the generators if the allocation issue is litigated.

All of the generators understand the need to establish a means to allocate a portion of the work and EPA's desire that the work commence. The main obstacle to fixing any percentage is the precedent it may set in terms of future site allocation or private party contribution litigation. Any settlement involving all of the generators will have to contain provisions making it clear that the generators have assented to the percentages for settlement purposes only. Also, the allocation would have to be subject to

change, if the generators or EPA find evidence that demonstrates that NL was both an owner/operator and generator. Finally, any generator must retain the right to sue NL for contribution. Because of the diverse views of the generators and NL Industries on allocation and the possibility that the volumetric shares understate NL's contribution, some safeguards are necessary.

The consensus of the Steering Committee is that the RI/FS performed by NL is deficient in several areas. Because of the concerns we have previously referenced and the absence of any discussion in the ROD of new techniques, in particular roto-tilling, it is the Committee's consensus that the RD investigation should include a tilling/liming pilot scale study. This alternative was not discussed in the FS, despite its acceptance by other regulatory bodies in similar situations. As noted in the December 7 meeting, the MPCA has adopted a State Rule recommending tilling of residential soils containing lead as the preferred remedial action. It is the belief of the Committee that this method provides a safer and more cost-effective way of addressing residential soils with contamination levels between 500 ppm and 1,000 ppm, while providing the same overall level of protection to the public health. We are researching various procedures or mechanisms to review the pilot scale study following completion, with the thought of finding one agreeable to you and the Committee. Any review must include a good faith commitment by the agency to reconsider remedial action depending upon the results of the pilot scale study. If the study is not convincing, the cleanup would proceed as set forth in the ROD consistent with the carve-out.

If the pilot study indicated that tilling with liming is a viable option, the group would propose using this method to remediate all residential site soils with lead levels above 500 ppm but less than 1,000 ppm to the performance standard in the ROD. For site soils greater than 1,000 ppm, excavation would be done to achieve the ROD's performance standard. This potential carve-out option may receive the full support of all the generators and is enclosed with this letter. Please note that the value of $9,678,900 for the generator carve-out assumes two things: (1) that all the generators participate in the carve-out; and, (2) that roto-tilling is not part of the remedial action.

Enclosed is a revised ROD cost estimation which should reflect EPA concerns relative to the blood-lead survey, home interior inspections, and other contingency measures. This final cost projection may be used to craft a potential generator carve-out. The generator representatives at the December 7 meeting believe that EPA's agreement not to include specific units of work

within the generator's carve-out (e.g., post-constructions work, home interior inspections, or other contingency measures) will assist greatly in arriving at a settlement among all of the generators.

As with our discussions on Friday, please consider all of the above to be an informal presentation of various views for your consideration. The members of the PRP Committee have not had the time to consult their managements on the potential carve-out. Please review the carve-out and provide feedback by December 19.

We would request, in light of the preliminary and obviously sensitive nature of these negotiations, that this letter and our discussions pertaining to a potential settlement following issuance of the 106 Order not go beyond your agency.

Please contact me at (313) 947-1664 or Mark Hester at (313) 974-1552 at your earliest practical convenience.

Sincerely,

Daniel J. Bicknell

Daniel J. Bicknell

Enclosures

NL INDUSTRIES/TARACORP ROD COST ESTIMATION

Unit of Work	Cost ($000)	Comments
Multi-layer Cap (Areas 1-3)	712	$1,233 Areas 1-8; FS esti
Indirect Capital Costs (45%)	**1,032**	
Contingency (25%)		
Engineer (15%)		
Legal (5%)		
Bottom Liner	133	FS adj esti
Indirect Capital Cost (45%)	**193**	
SLLR Pile	109	FS esti
Indirect Capital Cost (45%)	**158**	
Contained Drosses	6.5	FS esti
Indirect Capital Cost (45%)	**9.4**	
Area 1	1,663	ROD esti
Indirect Capital Cost (45%)	**2,411**	
Area 2	1,603	FS esti
Indirect Capital Cost (45%)	**2,324**	
Area 3 (4,750 CY)	491	CY x $103.3/CY
Indirect Capital Cost (45%)	**712**	
Other Costs	994	Revised esti
Monitoring Well	14	FS esti 1.8
Deed Restrictions	15	FS esti
Safety Program	40	FS esti
Mobilization	300	FS esti 65
Dust Control	400	FS esti 40
Equip't Decon	200	FS esti 40
Off-site Drainage	25	FS esti
Indirect Capital Cost (45%)	**1,441**	
Blood-Lead Survey	**200**	EPA esti
Alleys-Venice,Eagle Park,etc	748	FS esti 106 w/
Indirect Capital Cost (45%)	**1,085**	7 fold factor (?)
Eagle Park Acres Ditch	1,186	FS esti 118 w/
Indirect Capital Cost (45%)	**1,719**	10 fold factor

Annual O/M	53	FS esti 35
Indirect Capital Cost (45%)	77	For WP&Reports
Present Worth - 30 yr, 5%	1,177	
Air Monitoring	0.5	FS esti
Air Sample Analysis	8	FS esti
Groundwater Sampling	8.5	FS esti 1.8
Groundwater Analysis	14.3	Indi after yr 2
Site Mowing	6.5	FS esti
Site Inspection	2	FS esti
Misc Site Work/Repair	9	FS esti
Site Work Materials	4	FS esti

New Estimates Outside of FS

Area 4 (26,600 CY)	2,748	CY x $103.3/CY
Indirect Capital Cost (45%)	**3,985**	
Area 5 (5,560 CY)	393	CY x $103.3/CY
Indirect Capital Cost (45%)	**570**	
Area 6 (9,500 CY)	982	CY x $103.3/CY
Indirect Capital Costs (45%)	**1,424**	
Area 7 (4,750 CY)	491	CY x $103.3/CY
Indirect Capital Costs (45%)	**712**	
Area 8 (34,200 CY)	3,533	CY x $103.3/CY
Indirect Capital Costs	**5,123**	
Extra Multi-layer Cap Area	521	FS adj esti
Indirect Capital Cost (45%)	**756**	
Additional Bottom Liner	534	FS adj esti
Indirect Capital Cost (45%)	**774**	
Other Costs	940	
Safety Program	40	FS esti
Mobilization	300	FS esti 65
Dust Control	500	FS esti 40
Equip't Decon	200	FS esti 40
Indirect Capital Cost (45%)	**1,363**	
Home Interior Inspections	231	$150/house
Indirect Capital Cost (45%)	**335**	
Other Contingency Measures	104	see assumptions
Indirect Capital Cost (45%)	**151**	
Total	**27,654**	

Total Costs do not include:
- Contingency Plans/Measures
- Remedial Design Investigation

Assumptions:

***Bottom liner** - Alternative "E" FS cost estimate for total cost of pile + residential soils liner - $1,259 X residential soil (98,567 CY) / resi and pile soils (183,567 CY) = $667,270 for liner

***Residential soils-**

-3" depth removal per FS cost estimate

-62.5% average surface area/block to be excavated per Enroserv Midwest 11/6/90 Report

-160,000 average sq.ft./block per Enroserv Midwest 11/6/90 Report

-950 average CY/block per Enroserv Midwest 11/6/90 Report

-98 total residential blocks in Areas 1 - 8 per Surdex 2/90 aerial photographs

-$103.3/CY for residential soil remediation, which includes soil removal and replacement, trees/shrub replacement, and pavement cost.

***Monitoring wells-**

-installation - 4 deep wells at 60 ft./well x $60/ft. = $14,400

-annual monitoring -

-collection-17 wells x 2 times/yr = 34 samples x $250/sample = $8,500/yr

-analysis-34 samples + QA/QC = [43 samples x $1,500/HSL analysis = $64,500/yr x 2 yr = $129,000/ 2 yr] + [43 samples x $250/ indicator analysis = $10,750/yr x 28 yr = $301,000] = $430,000/30 yr = $14,300/yr

***Home Interior Inspections -**

-XRF in-house inspection for lead sources (e.g., paint, plaster) at $150/house (3 hrs/house at $50/hr) x 1421 houses = $231,150

***Other Contingency Measures -**

-driveway at average residence = 8' x 30' = 240 sq ft x 1421 houses = 341,040 sq ft

-assume that one out of five houses removes driveway = 341,040 sq ft / 5 = 68,208 sq ft as contingency.

-68,280 sq ft x 3" depth removal of soil = 27,283 cu ft / 27 cu ft/CY = 1010 CY x $103.3/CY = $104,383

Carve-out

Liability

* owner/operator - 65% liability

  -$27,654,000 total site cost x 0.65 = **$17,975,100**; owner/operator share of total site cost. NL had its own separate lead collection operation, which generated about one-half of the total lead sent to the smelter. This 50% volumetric share is not reflected in the EPA ranking summary. This large NL generator share needs to be factored into an liability equation.

* generators - 35% liability

  -$27,654,000 (total site cost) - $17,975,100 (o/o share) = **$9,678,900**; generator share of total site cost.

  $9,678,900 is the overall generator's share of the total remedy costs of $27,654,000; if all the generators elect to participate in the carve-out.

* Viability Factor (VF) - to normalize % of potentially viable generator liability.

- A Viability Factor is to account for non-viable potential settlers, since a significant number of PRP generators are bankrupt or out of business. In numerical form it may be expressed as - % of total site amount x 1.466 (viability factor) = % of generator liability.

-The below computations are used to arrive at a VF for this site assuming that the entities noted as non-viable on the attached ranking summary are either bankrupt or out of business.

- 1st - 47th total generator % = 81.654%; yet only 65.586% is from viable parties.

- 48th - 362nd total generator % = 18.346%; yet only approximately one-seventh would be anticipated to be viable settlers. 18.346% x 0.143 = 2.624%; % of viable generators below 47th rank.

- 65.586% (% of viable generators 1st to 47th rank) + 2.624% (% of viable generators 48th to 362nd rank) = 68.210% as total % of viable generators.

- $VF = \frac{100\%}{68.210\%} = 1.466$; factor to normalize %

The viability factor is utilized to normalize the overall viable generators percentage of 68.210% to 100%. This is required to makeup for non-viable party percentages.

Carve-out *

Unit of Work	Cost ($000)	Comments
Multi-layer Cap (Areas 1-3)	712	$1,233 Areas 1-8; FS esti
Indirect Capital Costs (45%)	1,032	
Contingency (25%)		
Engineer (15%)		
Legal (5%)		
Bottom Liner	133	FS adj esti
Indirect Capital Cost (45%)	193	
SLLR Pile	109	FS esti
Indirect Capital Cost (45%)	158	
Contained Drosses	6.5	FS esti
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Area 3	491	CY x $103.0/CY
Indirect Capital Cost (45%)	712	
Blood-Lead Survey	200	EPA esti
EPA past costs	200	
Cash	998.5	
Other Costs	994	Revised esti
Monitoring Well	14	FS esti 1.8
Deed Restrictions	15	FS esti
Safety Program	40	FS esti
Mobilization	300	FS esti 65
Dust Control	400	FS esti 40
Equip't Decon	200	FS esti 40
Off-site Drainage	25	FS esti
Indirect Capital Cost (45%)	1,441	
RD Invest.- Tilling Pilot Study	-	No cost
Total	9,678.9	

* If the RD cost estimate is < or > 10% of the $ 27.7 million value, work may be added to or deleted from the above units to maintain a 35% generator carve-out.